action upon a promise, solely because he is beneficially interested in its performance, seems now in a fair way to lose the influence which it has had in some of our State courts. Long ago the English courts repudiated it, the United States and the Massachusetts courts have practically denied it, and now a New York court has refused to apply it any further than it can help. (See 8 HARVARD LAW REVIEW, 93; 9 id. 233.) In the common case of a promise by a bank to a depositor to pay his checks, even courts which fully accept *Lawrence* v. *Fox* will not support an action by the check-holders against the bank, though they are certainly legal creditors of the promisee. (See 9 HARVARD LAW REVIEW, 539.) There is, to be sure, a considerable class of cases where the purchaser of mortgaged land has assumed to pay off the mortgage debt; and the courts have allowed the mortgagee to enforce the payment of the debt by such a purchaser. Of this sort is the recent case of *Solicitors' Loan and Trust Co.* v. *Robins*, 54 Pac. Rep. 39 (Wash.), in which, however, there is a vigorous dissenting opinion. But whenever relief is given in these cases, it ought to be upon purely equitable grounds; as is declared in the opinion in *Keller* v. *Ashford*, 133 U. S. 610, cited as the leading authority in *Trust Co.* v. *Robins* (*supra*), which expressly denies that the right of the mortgagee under certain circumstances to take advantage of an obligation entered into by a purchaser of the mortgaged property results from any legal right of the mortgagee to sue on a contract the discharge of which would be for his benefit. See also on this point *Green* v. *Stone*, 34 Atl. Rep. 1099, a recent New Jersey case.

LIBEL INVITED BY THE PLAINTIFF. — That one who procures the publication by another of a libel to his agents, for the purpose of making it the foundation of an action, cannot recover, is a well established rule of law. It has been recently reaffirmed by the Supreme Court of New York. *Miller* v. *Donovan*, 39 N. Y. Supp. 820. In that case, which is a good type of the class in question, the plaintiff having learned that the defendant had in his possession a libellous letter concerning him, sent to the defendant agents, who, by means of false representations, induced the defendant to read the letter to them. A conclusion not only in accord with the authorities, but also of evident soundness and rectitude, should rest on definite and substantial grounds. Yet Giegerich, J., who delivered the opinion of the court, while intimating that the occasion was privileged, supported the decision chiefly on the broad but uncertain basis of apparent justice. The opinions, too, in the few earlier cases on the subject, in all of which the same result has been reached, have not strength either in agreement with one another or in sufficient reason severally. Such a state of the authorities is not satisfactory.

The view taken by the judges in the earliest cases was that publication to the plaintiff's agents was, in truth, merely communication to the plaintiff himself, and that consequently there was no publication. *King* v. *Waring*, 5 Esp. 15; *Smith* v. *Wood*, 3 Camp. 323. The difficulty with this is that it puts a purely fictitious meaning on the word "publication." One is an agent without losing his identity, and a communication is made not only to the agent, but also to the thinking and reasoning being. Besides, if the "no publication" theory is adopted, how are cases where there has been a previous unprivileged publication to be dealt with? It has several times been held that where the defendant had spoken slanders,

and the plaintiff before beginning suit sent a person to the defendant to investigate, and the latter repeated the slanders, the plaintiff could recover on the basis of the communication to his agent. For, as was pointed out by Lord Denman, it would be absurd to give the defendant extra rights when the plaintiff took a reasonable precaution. *Griffiths* v. *Lewis*, 7 Q. B. 61; 14 L. J. Q. B. 199. This, which is undoubtedly the present law, effectually does away with the "no publication" idea, as far, at least, as the authorities are concerned. *Duke of Brunswick* v. *Harmer*, 14 Q. B. 185; 19 L. J. Q. B. 20; *Gordon* v. *Spencer*, 2 Blackf. 286. Where the plaintiff was the first at fault, that is, where, as in the principal case, there had been no previous publication, the later decisions hold the occasion to be privileged. *Warr* v. *Jolly*, 6 Car. & P. 497; *Howland* v. *Blake Mfg. Co.*, 156 Mass. 543. On principle, this view seems scarcely more satisfactory than the older and discredited theory. Privilege to communicate imports the notion of a right like that of self-defence. Yet, in these cases, the defendant does not speak as of right; for if he knew of the circumstance which according to the courts gives him the privilege, namely, that his listeners are the plaintiff's agents, he would not speak at all.

Would it not be better for the law to admit the existence of the constituents necessary to make a technical libel, and deny the plaintiff relief on the ground that *volenti non fit injuria*?

Liability of a Lunatic for Negligence. — The case of *Williams* v. *Hays*, which has been appearing in various New York courts at irregular intervals during the last two years, and which probably has not even yet been finally decided, is remarkable for the human as well as legal interest that attaches to it. The facts of the case are refreshingly unusual. The defendant, who was one of several joint owners in a vessel, contracted with his co-owners to sail her under certain conditions, not necessary to be here detailed, but which, the court decided, made him not an agent but a charterer, or owner *pro hac vice*. On a voyage south the vessel met with severe storms, and her captain, the defendant, for more than two days was almost constantly on duty. Finally, becoming exhausted, he went to his cabin. The mate who had been left in charge, having found that the rudder was broken, went down for the captain and brought him on deck. The latter refused to recognize that the vessel was in danger, and declined the aid of two tug-boats, the masters of both of which offered to tow him to safety. In consequence, the vessel drifted on shore in broad daylight, and became a total wreck. The assignee of the rights of the company that insured the vessel brought suit. The defendant captain's sole defence was that from the time he entered his cabin till he found himself in the life-saving station he was totally unconscious and insane.

In November, 1894, the case came before the Court of Appeals squarely on the question: Is one, insane by act of God, liable for torts of negligence? By a bare majority, the court decided in the affirmative, but added: "If the defendant had become insane solely in consequence of his efforts to save the vessel during the storm, we would have had a different case to deal with. He was not responsible for the storm, and while it was raging his efforts to save the vessel were tireless and unceasing, and if he thus became mentally and physically incompetent to give